

Appl. No. 10/781,457
Atty. Docket No. CM2727C
Amdt. Dated Apr. 1, 2005
Reply to Office Action of Oct. 1, 2004
Customer No. 27752

REMARKS

Claim Status

Claims 1-7, 9, 12-23 are pending in the present application. No additional claims fee is believed to be due.

Claim 5 has been amended to address the examiners objections regarding the definitive value of n in terms of the fixed number of carbons atoms in an amino acid.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection under 35 USC §112, First Paragraph

As mentioned above, claim 5 has been amended to address the issue under 35 USC 112.

Rejection under 35 USC §102

Claims 1, 3-5, 7-11 and 18 over U.S. Patent 5,177,065.

The office action states that the elements of claim 1, the zwitterionic bulking agent and film-forming polymer are found in various parts of '065's patent specification disclosing a monosaccharide-containing wound healing preparation. This patent, however, discloses that a monosaccharide is an essential element of the invention. These include the five and six carbon containing sugars, ribose and fructose as well as the broad class of maltodextrins. This patent teaches that this element is critical for revascularization of skin wounds for which this composition is principally designed (see column 4, lines 16-32).

The pending claims of the application as amended require a glassy material having a minimum glass transition temperature (62°C). The disclosed sugars do not meet this definition. According to the article accompanying this response, "*Calorimetric study of glass transition occurring in fructose solutions*"; *Carbohydrate Research*, 246 (1993) 13-22 Elsevier Science Publishers B.V., Amsterdam, the glass transition temperature or T_g of fructose is 10°C (see page 16, Table I). This is far under the minimum 62°C as found in the amended claim 1.

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In addition to these specific sugars disclosed in '065, the class of maltodextrins disclosed in '065 is a very large class having numerous members within that class. The selected maltodextrins presently claimed (having a molecular weight of from about 10,000 to about 70,000) is relatively selective as compared to this very large generic class disclosed in '065. Disclosure of such a large class does not destroy the novelty associated with the selection of the much more narrowed group within this large class. Clearly one skilled in the art would not derive the selectivity within this large class of maltodextrins as defined by the claims on the basis of the broad and general teaching of the '065 reference.

On the basis of the amendments to the pending claims and the absence of any teaching in the reference regarding the limitation regarding the materials claimed herein, it is respectfully requested that the examiner immediately withdraw the rejection of these claims on the basis of 35 USC §102.

Rejection under 35 USC §103(a)

Claims 1-11, and 13-23 have been rejected under 35 USC §103(a) as being unpatentable over EP 0780116 and US Patent 6,368,595 and the Skin Care and Cosmetic Ingredients Dictionary, 1994, page 303.

This rejection is traversed. Reference '595 by itself does not establish a *prima facie* case of obviousness because it does not teach or suggest all of the claim limitations of the pending claims. This patent teaches topical application of an enzyme-containing composition using a film-forming agent wherein after the enzyme has fulfilled its task, the film is removed from the site of application (see column 1, lines 40-46). The film-forming agent disclosed is PVA. Additionally, '595 discloses materials for stabilizing the enzymes is essential and include polyols like glycerol, sorbitol, ethylene glycol, maltodextrins as well as sugars including sucrose, lactose, glucose or trehalose (see column 3, lines 29-39). None of these materials remotely suggest using the low molecular weight, water-soluble material of amended claim 1c. This is particularly evident since the composition of the present invention does not necessarily contain enzymes.

EP 0780116 adds nothing in this regard to the selectivity and the resulting benefit associated with such selectivity of the claimed low molecular weight, water soluble material of the pending claims. The "other ingredients" disclosed in '116 include

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many of the materials already disclosed in '595 such as sorbitol, maltitol, xylitol and glycerine. As previously mentioned these neither disclose nor make obvious the selection of the materials under claim 1c. The Skin Dictionary reference likewise adds nothing regarding such selectivity.


On the basis of the arguments above, it's evident that there's no *prima facie* case for obviousness established by the combination of these references for the amended claims. Therefore, the claimed invention is unobvious and that the rejection should be withdrawn.

Conclusion

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-7, 9, 13-23 is respectfully requested.

Respectfully Submitted,

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